IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(Crl.).No. 155 OF 2007(S)

PETITIONER:

SUDHA, S/O.LAKSHMANAN, AGED 22 YEARS,
HOUSE NO.37/885, UDAYA COLONY, KADAVANTHRA,
ERNAKULAM.

BY ADV. SRI.MATHAI VARKEY MUTHIRENTHY

RESPONDENTS:
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1. THE STATION HOUSE OFFICER,
CENTRAL POLICE STATION,
ERNAKULAM.

2. DISTRICT MAGISTRATE
(DISTRICT COLLECTOR),
COLLECTORATE, ERNAKULAM.

3. THE SUPERINTENDENT, CENTRAL PRISON,
VIYYOOR.

K.R. RAVEENDRANATH, LIAISON OFFICER

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 10.7.2007, THE COURT ON 24/07/2007, DELIVERED THE FOLLOWING:

P.R. RAMAN &
T.R. RAMACHANDRAN NAIR, , JJ.
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W.P.(CRL) NO. 155 OF 2007
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DATED THIS, THE 24TH DAY OF JULY, 2007.

J U D G M E N T

Raman, J.

Petitioner is the wife of one Lakshmanan, son of Kunjappan, House No. 37/885, Udaya Colony, Kadavanthra, Ernakulam, who is stated to have been taken into custody by the first respondent Station House Officer, Central Police Station, Ernakulam, on 11.6.2006. Petitioner alleges that no intimation of any kind was given at the time of arrest or the reason for his arrest. On enquiry by the petitioner, no information regarding his whereabouts was given by the first respondent and she came to understand from the paper report that her husband was arrested under the Goonda Act and is kept in the Central Prison, Viyyoor. It is alleged that the second respondent ordered detention of the said person at the request of the first respondent. According to the petitioner, her husband is not a goonda or rowdy as defined under the Act and he was not given any opportunity to prove that he is not a goonda/rowdy, before the order of detention was passed. It is alleged that the detention of the husband of the petitioner by

the first respondent under the orders of the second respondent is without any legal or valid ground and there are no grounds to declare him as a goonda/rowdy and Sections 3 and 7 of the Goonda Act is not complied with. Hence petitioner pays for issuance of a writ of Habeas Corpus or any other appropriate writ or direction, commanding production of her husband and release him from the illegal custody of the respondents.

2. Subsequently, I.A. 8935/2007 was filed supported by an affidavit in which it is averred that the petitioner was allowed to meet the detenue and got two documents which are produced as Exts.P1 and P2. It is further averred that Lakshmanan is not involved in any case after 1999 and hence he will not come under the definition 'Known Rowdy' under the Act. So however, the petition was not amended incorporating additional grounds or claiming separate relief challenging Exts.P1 and P2.

3. The second respondent filed a statement wherein it is averred that he received credible information from the first respondent vide FIR No. 866/2007 dated 10.6.2007 through the Commissioner of Police, Kochi City, against the petitioner's husband and the said report contained information about his involvement in six criminal cases registered in Ernakulam Central Police Station. The details of the said cases are also given in the statement which involves offences such as causing grievous hurt with

deadly weapons, causing hurt in committing robbery, theft etc. The Commissioner of Police, Cochin City, vide under the Kerala Anti-social Activities Prevention Ordinance, 2007 dated 10.6.2007, has reported that petitioner's husband Sri. Lakshmanan is a known rowdy as defined in the KAAPO, 2007, that he is very active in recent times and is prone to assaulting members of public at slightest provocation and that he is likely to commit serious offences which would hamper the peace and tranquility of the area and would be a threat to the public at large. It is further stated that on examination and evaluation of the reports including the preliminary report of the Circle Inspector of Police, Ernakulam Central Police Station, forwarded along with the report of the Commissioner of Police Ernakulam and the connected records of the cases filed against the petitioner's husband and being satisfied that he is a Known Rowdy as specified in the Ordinance and that if he remains at large, he would indulge in anti-social activities, detention order was issued by the second respondent in exercise of the powers conferred on him under Section 3(1) and 3(2) of the KAAP Ordinance, 2007 and G.O. 38284/SSA4/2007/ Home dated 20.4.2007 (produced as Exts.R2(a) and R2(b) herein). It is also stated that the detention order and the grounds of detention were duly served on the detenue and acknowledgment to this effect was also taken on the document

itself. Ext. R2(c) is the copy of the memo issued for executing the detention order and Ext.R2(d) is the jail admission order. Petitioner's husband Lakshmanan was thus arrested by the Circle Inspector of Police at 11.15 A.M. on 12.6.2007 and detained at Viyyur Central Jail. These facts were also reported to the Principal Secretary and also to the Director General of Police. Detention of Sri. Lakshmanan was confirmed and the period of detention has been modified as six months from the date of detention, as per Annexure R2(e) order. It is also stated that the petitioner has got a remedy by way of filing a representation before the Government and the Advisory Board under Section 7(1) of the Ordinance and hence there is no ground to issue any Habeas Corpus writ by this Court. The second respondent has also sought leave to file a counter affidavit, if necessity arises.

4. Heard both sides. The contention raised in the writ petition is that the petitioner's husband was arrested without disclosing the reasons thereof. It is seen that Annexure R2 (a) produced along with the statement is the order of detention issued by the District Collector and District Magistrate, Ernakulam based on the information received from the Station House Officer, Central Police Station, against Sri. Lakshmanan. The substance of the information as conveyed in the report was that Sri. Lakshmanan is

involved in seven criminal cases including hurt, theft, snatching etc. After evaluating the said report and other facts reported with regard to Sri. Lakshmanan, the Officer was satisfied that he is a Known Rowdy and if he remains at large, he would indulge in antisocial activities. Hence in exercise of the powers under Section 3(1)/3(2) of the Ordinance and with a view to prevent him from acting in such manner , the District Magistrate placed him under detention on the grounds produced as Annexure .R2(b). Annexure R2(c) is the memo for executing the order of detention and Annexure R2(d) is the jail admission authorization. Annexure R2(e) is the order of confirmation passed by the Government.

5. The detention order was passed on 11.6.2007 which was confirmed on 19.6.2007. Thus the confirmation was made within ten days. Even though it was contended that the petitioner's husband was not informed of the reason for the arrest and detention, petitioner herself has produced Exts.P1 and P2 which would evidence the fact that such orde4rs were served on him. Further, it is specifically stated that as reported by the Police Officer, who served the detention order on the detenue, at the time of serving the order, he was informed in writing that he can file a representation before the Government as contemplated under Section 7(1) of the Ordinance.

In the above circumstances and facts, the allegation that the detenue was not served with the order of detention cannot be believed to be true. The detenue has got a remedy by way of filing a representation before the Government and Advisory Board and thereafter, to approach this Court in accordance with law, in case an occasion arises thereto, after the decision of the Advisory Board. In such circumstances and in view of the facts stated above, it cannot at this stage be said that the arrest and detention of the petitioner's husband is totally illegal or without jurisdiction, on the grounds urged. Leaving open the right of the petitioner to approach this Court as aforesaid, the writ petition is dismissed.

P.R. RAMAN,
(JUDGE)

T.R. RAMACHANDRAN NAIR,
(JUDGE)

knc/-